

Meeting Minutes
Iowa Child Abuse Registry Meeting
September 22, 2011

Location: Neal & Bea Smith Law Center; Second Floor; Clinic Library; 2400 University Avenue; Des Moines, Iowa.

Members Present: Vern Armstrong, Josh Bornsink, Ruth Cooperrider, Jean Davis, Anna Dey, Jerry Foxhoven, Keith Kudej, Denise Moore, Chuck Palmer, John Pollak, Wendy Rickman, Steve Scott, Mike Sorci, Diane Stahle, Deborah Thompson, Barbara Van Allen, and Beverly Zylstra.

Members Absent: Susan Ault, Jeff Farrell, Jana Lewis, Shellie Mackel, Amber Markham, and Rod Roberts.

Visitors Present: Kristie Oliver, Sandi Hurtado-Peters, and Kris Bell.

Pre-Meeting Meeting Handouts: Agenda; Minutes from our last meeting of August 26, 2011; A flowchart of the “Child Abuse Assessment Milestones” prepared for us by DHS; A flowchart of “Child Abuse Appeals” prepared by Judge Jeff Farrell of D.I.A.; Child Abuse Appeals Data prepared by Judge Jeff Farrell of D.I.A.; An outline on the Party Status Issue prepared by Judge Jeff Farrell of D.I.A.

Meeting Handouts: Agenda; Section 7 of House File 562; Summary of Key Requirements of Section 7, House File 562; Work Plan of the Group. Ruth Cooperrider also provided two documents: A letter from Sally Titus dated April 20, 2010 with attachments providing data on Director’s reviews and an undated document on DHS letterhead providing data on number of reviews and timing of reviews for FY 2009.

The meeting was called to order at 10:00 a.m.

Introductions and Welcome: All members and guests were welcomed and introduced themselves. Jerry Foxhoven passed out the meeting exhibits and reviewed the Summary of Key Requirements of Section 7 of House File 562 as well as the Work Plan for the Group.

Expediting the Appeals Process: Several Items were identified as issues to be discussed in examining this issue. The first is the allocation of sufficient resources from the Attorney General’s Office. Diane Stahle of the Attorney General’s office reported that there are 3 full-time Assistant Attorney Generals assigned to appeals of cases on the child abuse registry. There are approximately 1,200 cases per year appealed (less than 10% of all registry placements) handled by those three assistants. She also

reported that the delay in concluding appeals has improved substantially over time, going from approximately 2 years to under 1 year. 75% to 80% of all appeals are settled prior to hearings. She reported that the Attorney General's office does currently have the necessary resources to temporarily reassign personnel to resolve a current backlog, but that, if additional changes are made that require more resources or if a long term increase of attorneys is needed in this area, additional funding would be required. Diane also expressed some concern that, if all appeals were expedited, fewer cases could be settled and more individuals would remain on the registry because of insufficient time to demonstrate compliance/completion of the necessary services to eliminate the risk of further abuse. The most common settlement is an agreement that the abuse be confirmed, but not placed on the registry. Potential Solutions Identified: (1) The Attorney General's office has indicated that they can shift resources on a temporary basis to relieve a current backload; (2) No expedited schedule would be required, allowing parties to agree to delay the Pre-hearing Conference date to intentionally allow time for the alleged perpetrator to complete services.

The second issue identified was the need to establish priorities as to which appeals pose the greatest need for expedited appeals. Jean Davis indicated that the greatest constitutional/due process concerns relative to the delay in the appeals process revolves around individuals who have or will apply for employment that may be denied due to placement on the registry. Ruth Cooperrider reported that Illinois has a dual process for timing of appeals, expediting appeals in cases where employment is impacted. Diane Stahle indicated that the Illinois rules are very convoluted and confusing and may be too complex to be workable. Jean Davis noted that there are three times when the issue of employment and placement on the registry are triggered in these appeals: (1) when there is a request to consolidate the appeal of the denial of a background check employment approval with the appeal of the placement on the registry; (2) where the issue is raised at the Pre-Hearing Conference; and (3) when there is a motion for change or expedited hearing date because of an employment application. Potential Solutions Identified: (1) DIA and the Attorney General's office could modify the notice of pretrial order and procedure for Pre-hearing Conferences to specifically identify the issue of employment as being involved in the case. (2) Cases involving employment issues could be assigned to a "fast track/expedited" schedule.

The third issue identified was the issue of "party status" of parents. At the last meeting Administrative Law Judge Jeff Farrell raised that issue that, because parents are given party status by Iowa's statute, appeals often occur just because there are "warring parents." A paper on the issue was distributed prior to this meeting. A common example is when an alleged abuse is Not Confirmed, and the other parent appeals. This happened 109 times last year (out of a total of 1,259 appeals, or approximately 10% of the cases), and none of those cases were reversed. It is also very unlikely that those

types of cases will be settled. Since 75% to 80% of all cases are settled, these cases constitute a significant number of cases going to hearing. Mike Sorci indicated that he wanted to ensure that victims of alleged abuse were protected and that removing the other parent's ability to appeal may not provide the necessary protection to the child. Wendy Rickman and Jean Davis explained the process in place for review of the decision by DHS that is currently available without involvement of a contested case. Potential Solutions Identified: (1) Amend the statute to delete party status for parents not alleged to be an abuser in appeals of child abuse registry issues; (2) Allow DHS reviews of the finding to continue but deny the availability of Contested Case Review to cases where abuse is not confirmed.

The third issue identified was the progress of appeals on cases where there are statutory grounds that may obviate the appellant's defense. For example, Iowa's statute specifically states that, while a case that is minor and isolated and unlikely to reoccur should not normally be placed on the registry, this exception does not apply if a CINA adjudication occurs based on the abuse or if a criminal conviction occurs for the abuse. In such a case, under the *Grant* decision, the party is still entitled to a hearing and the state is not entitled to a dismissal as a matter of law prior to the hearing. Consequently, some cases go all the way to hearing (including a Pre-hearing Conference) when the outcome is clear. Potential Solutions Identified: (1) Amend the statute allowing the Administrative Law Judge to dismiss the appeal on such legal grounds; (2) When a CINA petition or a criminal charge is filed as a result of the alleged abuse, stay the appeal pending the outcome at the adjudicatory hearing or the criminal charge.

Examination of the Broad Purpose of the Registry: Vern Armstrong was asked to provide a historical background of Iowa's child abuse registry. He reported that the initial concern was that the records be kept statewide to ensure that victims in families who move to a different county (or state) still are protected and to identify the victims who needed to be provided services. The purpose then "morphed" into one involving a substantial employment background check component of the registry. First, it was designed to provide a check for child care agencies, then foster homes, then nursing homes and other care facilities, and finally other employers who had consents signed by potential employees. When an employer asks for a child abuse registry background check, DHS will perform the check and report that there is or is not a "hit". No details are provided as to the type of abuse, etc. If the employer wants to know if the potential employer requests approval of eligibility to hire, DHS will review 7 issues and either indicate that the employee is or is not prohibited from serving in the specific employment role based upon the registry placement.

There are currently between 50,000 and 60,000 individuals on Iowa's child abuse registry. Once on the registry, the individual remains on the registry for 10 years. Keith Kudej indicated that, in his experience, there appear to be a number of potential

employees who claim that they did not know they were on the registry. Ruth Cooperrider pointed out that subjects of a child abuse finding may not be fully aware of all of the implications of being placed on the registry or fully aware of their right to appeal the placement on the registry. Jean Davis indicated that cases involving children with drugs detected in the system are rarely reversed, but that cases involving sexual abuse where the child does not testify are more frequently reversed. Potential Solutions Identified: (1) Highlight the consequences of registry placement on the notice of placement that is served on the alleged perpetrator; (2) Consider giving DHS the option (but not require them to do so) to take an individual off of the registry when they do the employment background check if they determine that it is no longer necessary to continue registry placement, but allowing DHS to maintain their files and documentation on the incident.

Member Resources: The following members agreed to provide the following data/information for the next meeting:

1. **Diane Stahle:** Diane will informally poll the Assistant Attorney Generals assigned to child abuse registry appeals to determine: a. if there appear to be any significant training issues for DHS workers on the requirements for placement on the child abuse registry; and b. the reasons for settlement of appeals of registry placements.
2. **Jean Davis:** Jean will informally poll the Administrative Law Judges assigned to child abuse registry appeals to determine: a. if there appear to be any significant training issues for DHS workers on the requirements for placement on the child abuse registry; and b. the reasons for settlement of appeals of registry placements.

Future Meetings: Future meetings for the workgroups were previously set: Friday, October 21st; Friday November 18th; and Friday December 2nd. All meetings will begin at 10:00 a.m. and conclude at noon and will be held at the Drake Legal Clinic at 2400 University Avenue in Des Moines.

Public Comment: Jerry Foxhoven called for public comment. None was offered.

The meeting was adjourned at 11:55 a.m.

Jerry Foxhoven, Meeting Facilitator